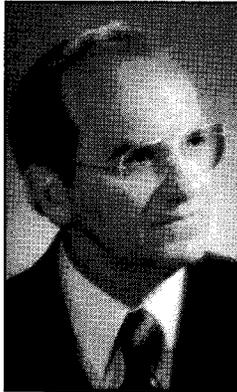


# Depositions v. Trials: Doing Voir Dire

By Judge Jerry Buchmeyer



This month's "which is worse" contributions are from Amarillo (Mitch Carthel), Dallas (Dorothy Prengler), Fort Worth (Judge Catherine Adamski Gant), Houston (Robert Malinak, Daniel Nelson, and Bradley Todes), Junction (Ronald Sutton), Lubbock (Dennis Burrows), Victoria (Janis Scott), and The Woodlands (Stephen Schlacks) — with two footnote contributions by Bruce<sup>1</sup> Springsteen.<sup>2</sup>

## Tell Me His Full Name

From Daniel B. Nelson of Houston (Hays, McConnell, etc.), this excerpt from the deposition of his client's employee "in a breach of contract and bad faith suit." The opposing attorney asking the questions was Debra Landis of Houston (Emmott & Arbuckle). To their credit, after THE QUESTION was asked, both Daniel and Debra immediately thought about sending it to "et cetera."

- Q. Do you know who wrote [the note]? I'm trying to find out.
- A. No, I don't.
- Q. What — Tom Brown's last name is—
- Mr. Nelson: *Brown*.
- Q. (By Ms. Landis) — *Brown*?
- A. *Yes*.
- Q. Is that it?
- A. *Yes*.
- Ms. Landis: I think that question should go back in the bar —
- Mr. Nelson: That's a good one.

## What About His Job?

From Dennis R. Burrows of Lubbock (McCleskey, Harriger, etc.), this deposition excerpt in a suit brought by the plaintiff on behalf of his stepbrothers.

- Q. Now, let's talk a little bit about what your stepbrothers do. What does James do for a living?
- A. He is a maintenance man at one of the motels in Jacksonville, FL.
- Q. What about Floyd?
- A. *Floyd, right now he is working for the government, the state.*
- Q. Which state?
- A. Texas.
- Q. *What does he do for Texas?*
- A. *Well, whatever you do when you are incarcerated in the pen.*
- Q. He is in the pen?
- A. Uh-huh.

## Beware of Expert Witnesses

From Stephen M. Schlacks of The Woodlands (Wetzel & Herron), this excerpt from the deposition of a doctor who had examined the plaintiff in a personal injury case — and who is being examined by the plaintiff's attorney.

- Q. Okay. Before [this medical] report was typed up and finalized, did you have a chance to read it?
- A. *Before it was typed?*
- Q. *Yes.*
- A. *That would be hard to do.*
- Q. I mean, looking at your notes or looking at a draft of it, Doctor.
- A. There is no draft...I can read it after it has been typed. I can't read it on a dictabelt.
- Q. Sure. I am with you. I appreciate the sense of humor, Doctor...

\*\*\*\*\*

From Dorothy Prengler of Dallas (Johnson & Sylvan), this excerpt which is, of course, from the deposition of a doctor.

- Q. Did we have then — or was there a shifting of where pediatric emergency patients were — were taken to be cared for?
- A. Were taken — taken by whom?
- Q. By ambulance. We're talking about emergency pediatric patients.
- A. I don't now if that would be accurate. The ambulances, in my mind, were always in a *fugue state* anyhow.
- Q. You used a word there, and I — I didn't quite pick it up. It — *it was an F word?*
- A. *I don't use the F word.*
- Q. No, not *the F word*, a — a F word. There was a —

Attorney: Can you read that back?

The Witness: That's not entirely true. I *do* use the F word, but I *did not* use the F word.

## Did I Really Cause That?

From Robert J. Malinak of Houston (Baker & Botts), this excerpt from a deposition in a case involving the alleged wrongful termination of an insurance company. The witness, an employee of the agency, was represented by Richard Tate of San Antonio (Kendrick & Pipkin). Robert's questions are "probing" the plaintiff's damage claims.

- Q. You are still compensated on a percentage of your commissions?
- A. Yes.
- Q. What was your 1991 compensation?
- A. Let me get my years straight here. That's last year?
- Q. Last year.
- A. Last year. My compensation?
- Q. Your compensation. How much you had to report to the IRS.
- A. To IRS to pay taxes on, I believe it was \$116,000.
- Q. How about '90, do you remember that?
- A. I can take a stab.
- Mr. Tate: Don't speculate.
- Q. Again, I wouldn't hold you to it. I am just trying to get a general feel for where you were going and where you were coming from. I don't want to subpoena your tax return. I'm not interested in a precise number.
- A. *Can I get a drink?*

## A Two-Fer from Todes

From S. Bradley Todes of Houston (DeLange, Hudspeth & Pitman), two deposition excerpts — the first involving a dead lawyer, and the second dealing with the subconscious.

*the only good lawyer is a ...*

- Q. Who was your legal counsel?
- A. Sherwood Gaines.
- Q. *Is he still a lawyer?*
- A. *Deceased.*
- Q. I guess that answers that question.
- A. *He's as good as the rest of them.*
- Mr. Craddock: *Hey*.
- Q. (By Mr. Todes) I'm almost done here.

## Did I really hear that?

- A. He had me lay down on the table, you know, where they have the people lay down at.
- Q. Right.
- A. *I was subconscious and —*

- Q. You were what?  
 A. I was subconscious — *self-conscious*.  
 Q. Self-conscious?  
 A. Self-conscious.  
 Q. All right.

**Did I Really Hear That?**

From **Mitch D. Carthel** of Amarillo (Sanders, Baker & Jesko), these excerpts from a deposition in which his client “was being questioned about certain financial transactions with an individual (**Jill**) who had died a few years prior to the deposition.

- Q. Did you ever have any conversations with Jill about this \$16,000 check?  
 A. Oh, yeah. Well, let’s put it this way, *I had limited access to Jill after she died*. Her attorney kept her out of the meetings.

(A few minutes later)

- A. She was getting advice from [her attorney], and hey, I backed off the whole thing, I had other things to do with my time.  
 Q. I’m sure she was getting excellent advice.  
 A. I’m sure she was.

Mitch adds: “After a review of the deposition testimony, I can only concur with my client’s opinion that Jill was getting excellent advice from her attorney. *We are all grateful that Jill’s attorney kept her out of those meetings.*”

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From **Judge Catherine Adamski Gant** of Fort Worth (141st District Court), this excerpt from the trial of a “routine contract case” before a visiting judge — which, fortunately, was given to Judge Gant by her court reporter, **Leo Underdown**.

- Q. Now, prior to the time that you were terminated, you had discussed the fact that you might be leaving Pension Planning Associates with Mrs. Greene’s husband, who’s in your golf group, correct?

**Doing Voir Dire I**

From **Janis L. Scott** of Victoria (Anderson, Smith, etc.), this marvelous (!) tale of *her* experience as a member of the jury panel during *voir dire*.

I received a municipal court jury summons and anxiously waited for voir dire to begin. After the charge for the case was read — *failure to keep dogs from creating a nuisance*, the city attorney began. After the usual niceties, he said that the case may seem silly to us, but when we heard the evidence about the number of dogs the defendant had and the number of times the police had been called to the property.... The defense attorney jumped to his feet, the

attorneys approached the bench and after some discussion, we were admonished to disregard any inadvertent reference to prior police calls other than the night in question. The city attorney, resuming his composure, then asked if any of the panelists knew the defendant. A lady in front of me raised her hand. When asked how she knew the defendant, *she loudly stated, “I was on another one of her juries when her case was here before!”* The case was continued until another jury panel could be summoned.

**Doing Voir Dire II**

From **Ronald L. Sutton**, district attorney of the 198th Judicial District (Concho, Kerr, Kimble, McCulloch & Menard counties), this excerpt from his *voir dire* in an aggravated assault trial in Brady. The assault “occurred in jail when the defendant beat up **Benny Martin**, a fellow prisoner, who was [being held on charges of] sexual assault of a child.

- Q. And Mr. Phillips?  
 A. I think I could be impartial.  
 Q. You think you could?  
 A. *I know Benny Martin*. I’ve known him for a long time. But I’m like everybody else — *I, personally, would shake the man’s hand for beating him up. But I think I could be impartial.*

Ronald adds: “After this, the state elected to proceed with a misdemeanor charge with credit for time served. It was apparent a majority of the panel felt the same way.”

- Even musicians and songwriters as talented as Bruce Springsteen — who may write and perform brilliantly when it comes to songs — may not be prepared for the terrors of testifying under oath. This excerpt is from Springsteen’s Deposition in a suit brought against him by two former “roadies” (members of his road crew):  
 Q. Why did you fine [the roadie] a week’s pay for missing a cue during the concert?  
 A. I was. I was, you know, I was. I was kind of angry and I think I was, you know, I felt frustrated and I felt, you know, sort of embarrassed and disappointed at the time.
- Later in the same Springsteen deposition:  
 Q. So the court reporter can get your answers, you should say “yes” and “no” instead of “yeah,” “nah,” “uh-uh,” and “uh-huh.” Do you understand that?  
 A. Uh-huh.  
 (From the Newport News Daily Press, (VA) Sept. 9, 1991).

*Jerry Buchmeyer is a federal district judge in Dallas. If you have a contribution to this column, write him at: U.S. District Court, Northern District of Texas, Dallas, 75242.*

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